

APPEAL NO. 032729  
FILED DECEMBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 2, 2003, with the record closing on September 15, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the date of the claimant's injury is \_\_\_\_\_; that the claimant did not timely report her injury within 30 days of the date of injury, and did not have good cause for failing to do so; and that the respondent (self-insured) was limited to the specific grounds that it listed in its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) of February 21, 2000, pursuant to Section 409.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.4(f) (Rule 124.4(f)). The claimant appealed the hearing officer's determinations based on evidentiary sufficiency grounds, and asserted that the hearing officer erred in determining that there was good cause to modify the issues to be heard at the hearing. The self-insured asserted that the claimant's appeal was untimely, and otherwise urged affirmance of the hearing officer's decision.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. An appeal submitted by facsimile transmission (fax) is deemed to have been sent on the day it is received. Rule 102.5(f)(1).

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on September 19, 2003. The claimant stated in her appeal that she received the hearing officer's decision on September 23, 2003. The 15th day after that date of receipt of September 23, 2003, excluding Saturdays and Sundays and holidays

listed in Section 662.003 of the Texas Government Code was October 15, 2003<sup>1</sup>. The claimant faxed her request for review on October 15, 2003, at 5:59 p.m. The claimant's appeal was received after normal business hours. Rule 102.3(e) states that "[u]nless otherwise specified by rule, any written or telephonic communications required to be filed by a specified time will be considered timely only if received prior to the end of normal business hours on the last permissible day of filing." Rule 102.3(d) provides that "[a]ny written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day." Finally, Rule 102.3(c) establishes that "[n]ormal business hours in the Texas workers' compensation system are 8:00 a.m. to 5:00 p.m. Central Standard Time with the exception of the Commission's field office whose normal business hours are 8:00 a.m. to 5:00 p.m. Mountain Standard Time." Given that the claimant received the decision on September 23, 2003, the last date for the claimant to timely file an appeal was before close of business on October 15, 2003. As stated above, the claimant's appeal was faxed to the Commission after normal business hours on October 15, 2003, at 5:59 p.m. The appeal is, therefore, untimely.

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<sup>1</sup> We note that Monday, October 6, 2003, Yom Kippur, is a holiday listed in Section 662.003 of the Texas Government Code, and it is excluded from the computation of the time for timely filing an appeal. However, Monday, October 13, 2003, Columbus Day, a national holiday, is not a holiday listed in Section 662.003 of the Texas Government Code, and is therefore not excluded from the computation of the time for timely filing an appeal.

The hearing officer's decision and order have become final under Section 410.169.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge